

Appln. No. 10/007,812  
Request for Reconsideration dated January 7, 2004  
Reply to Office Action of October 30, 2003

The enclosed Declaration demonstrates that the inventor conceived of a patella replacement device within the pending claims in 1989 and had an actual reduction to practice by May 15, 1990. These dates are well before the filing date of January 28, 1999, of the '423 patent and the 102(e) date of September 1, 1999, for the '576 patent. Neither of these references were published more than a year before the filing date of the present application. Consequently, they are not prior art.

Applicant notes that there is an international application corresponding to the '576 patent which was published on June 18, 1998, under Publication No. WO 98/25550. Such a publication would be prior art as to the present invention. Therefore, a copy of the reference is submitted herewith. The published application discloses a complete knee joint prosthesis having three distinct parts. This prosthesis is very different in configuration and purpose from the patella replacement device claimed by applicant. There is no teaching, suggestion or motivation in this reference to modify the complete knee joint prosthesis to be a patella replacement device. Moreover, even if one skilled in the art could derive a patella replacement device from the 1998 published application, that device would not be similar to the patella replacement device as set forth in the pending claims. Accordingly, the pending claims are patentable over this reference.

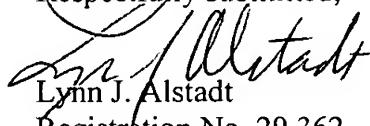
Applicant points out to the Examiner that claims 1 through 21 of the present application were copied from claims 1-13, 15-17, 19-22 and 24 of the cited Cohen patent. Consequently, when these claims have been found to be allowable an interference with the Cohen patent should be declared. Applicant proposes that applicant's claim 1 would be count 1 of the interference and applicant's claim 15 would be count 2 of the interference. Applicant's claims 2 through 14 correspond to proposed count 1 and claims 16- 21 correspond to proposed count 2. Applicant's

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claims 22- 26 do not correspond to either proposed count. They require a porous coating of a bone growth material. This feature is not taught or suggested by the prior art. Consequently, claims 22-26 are patentably distinct from the proposed counts and should not be part of the interference.

In view of the fact that claims 1 and 8 are patentable and these claims have been deemed generic, applicant respectfully requests rejoinder of the non-elected claims. Reconsideration and allowance of claims 1 through 26 are respectfully requested.

Respectfully submitted,



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